



OFFICE OF THE POLICE COMMISSIONER

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CHAN! *CHAN* April 17, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Kenji Ebanks**
Tax Registry No. 915661
Police Service Area 1
Disciplinary Case No. 86199/10

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on September 28, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 86199/10

1. Said Police Officer Kenji Ebanks, assigned to Viper 6, while off duty, on or about and between February 7, 2010 and February 8, 2010, inside of [REDACTED] in Kings County, engaged in conduct prejudicial to the good order, efficiency of the Department in that said Police Officer engaged in a physical altercation with Person A

[REDACTED] *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

2. Said Police Officer Kenji Ebanks, assigned to Viper 6, while off duty, on or about February 8, 2010 inside of [REDACTED] in Kings County, engaged in conduct prejudicial to the good order, efficiency of the Department, to wit: said Police Officer attempted to prevent Person A [REDACTED] from calling 911. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5

PROHIBITED CONDUCT

In a Memorandum dated January 24, 2012, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification Nos. 1 and 2 in Disciplinary Case No. 86199/10. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct here is egregious, and such behavior and conduct also unquestionably compromises Respondent Ebanks's ability to remain a viable member of this Department; thus, his immediate separation from the Department is required.

Although Assistant Deputy Commissioner Daniels-Depeyster recommends that Respondent Ebanks be summarily dismissed, I will permit an alternative manner of separation from the Department at this time. It is therefore directed that a post-trial vested-interest retirement agreement be implemented with the Respondent. In consideration of such, Respondent Ebanks is to be suspended from the Department for a 30 day period and separate from the Department on a continued suspended duty status. The Respondent is to also forfeit all suspension days since served and to be served, including all accrued leave and time balances, including terminal leave, and will immediately be placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Ebanks's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Respondent Ebanks does not agree to the terms of this vested-interest retirement as noted, this office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY.**



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

January 24, 2012

In the Matter of the Charges and Specifications : Case No. 86199/10

- against - :

Police Officer Kenji Ebanks :

Tax Registry No. 915661 :

Police Service Area 1 :

At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
 Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Penny Bluford-Garrett, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Aaron DePass, Esq.
 Law Office of Robert Santoriella, P.C.
 335 Adams Street, Suite 2720
 Brooklyn, New York 11201

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

The above-named member of the Department appeared before me on September 28, 2011 and September 29, 2011, charged with the following:

1. Said Police Officer Kenji Ebanks, assigned to Viper 6, while off duty, on or about and between February 7, 2010 and February 8, 2010, inside [REDACTED] in Kings County, engaged in conduct prejudicial to the good order, efficiency of the Department in that said Police Officer engaged in a physical altercation with Person A [REDACTED] Person A *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

2. Said Police Officer Kenji Ebanks, assigned to Viper 6, while off duty, on or about February 8, 2010 inside [REDACTED] in Kings County, engaged in conduct prejudicial to the good order, efficiency of the Department, to wit: said Police Officer attempted to prevent Person A [REDACTED] from calling 911. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Penny Bluford-Garrett, Esq., Department Advocate's Office, and Respondent was represented by the Law Office of Robert P. Santoriella, Aaron DePass, Esq., appearing.

Respondent through his counsel entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Police Officer Jonathan Arias, Sergeant Pasquale Pellegrino, Police Officer Olga Mencia, and Person A [REDACTED] as witnesses.

Police Officer Jonathan Arias

Arias has been a member of the Department for five years, and is currently assigned to anticrime duties in the 90 Precinct. On February 8, 2010, Arias responded to a radio run of a “[10-]34 domestic, which is an assault in progress” at [REDACTED] [REDACTED]. When Arias and his partner, Garcia, arrived at the apartment, Respondent opened the door, and Arias and Garcia split up to speak with Respondent and [Person A]

Arias spoke with Person A. “She said that her and [Respondent] were in an argument and that he tried to take the cell phone away from her while she was trying to make a call to 911.” She also said that there had also been an argument there the day before because he was supposed to be leaving the apartment. While the struggle happened, she sustained cuts to her hands and fingers. During the conversation, Arias stated, Person A was in tears and she seemed to be distraught, a little emotional.

When Arias found out Respondent was a member of the service, he called his supervisor, Sergeant Pellegrino, to the scene. Arias took Person A back to the station house. That was the extent of his contact with Person A.

During cross-examination, Arias testified that the apartment seemed to be in good shape with nothing disheveled or out of place. He also stated that the only injury that Person A appeared to have were cuts on her hands. Arias said that Respondent did not

appear to be in any disheveled condition, nor did he seem like he was drunk. He stated that he noticed some belongings that looked like they were packed to leave.

Upon questioning by the Court, Arias stated that Respondent's condition at the scene was "just calm." After opening the door for the police officers, Respondent sat on a couch and answered questions from Garcia.

Sergeant Pasquale Pellegrino

Pellegrino has been a member of the Department for 18 years. He is currently a patrol sergeant assigned to the 90 Precinct, where he has been since 2002.

On February 8, 2010, Pellegrino, responded to a call at [REDACTED] at approximately 5:45 p.m., along with two police officers. When he responded to that address he spoke with Person A who was at the window and she stated that she was in the apartment with a police officer and she wanted him out. When he arrived at the apartment, Person A said that Respondent constantly abused her, constantly would fight with her and hit her, and that she wanted him out of the apartment and she could not take it anymore. She also said that Respondent was abusive, he had hit her the day prior and they had argued at some point just before the police got there and as they struggled, she had tried to call 911 and he had taken the cell phone from her.

Pellegrino spoke with Respondent while he was still sitting on the couch and asked him if he was a police officer. Respondent answered yes, but stated that he was on modified assignment. Pellegrino inquired about the modified assignment and he believed Respondent said it was for the same type of stuff that was going on in the apartment that day. Pellegrino asked Respondent to produce his identification, which he did. Pellegrino

also asked Respondent if he had the cell phone and he produced it from his right, front pocket. At that time, Pellegrino told Respondent that they would need to go to the station house and that the investigation would continue in the station house as per the procedures of the Patrol Guide.

Pellegrino took Respondent and his [REDACTED] to the 90 Precinct station house. Upon arrival at the station house, he said that the commanding officer took over from there.

During cross-examination, Pellegrino stated that the apartment looked fairly normal, it did not look dirty. He said there was no sign of a struggle.

Upon questioning by the Court, Pellegrino testified that he believed the 911 call was made by Person A because of an argument stemming from a fight on the previous day.

Police Officer Olga Mencia

Mencia has been a member of the Department for over seven years. She has been assigned to the 90 Precinct for six years. She works as a domestic violence officer, which entails, in part, interviewing complainants regarding their domestic abuse. On February 8, 2010, she interviewed two people: Person A and Respondent. She prepared a complaint report [Department's Exhibit (DX) 1] charging Respondent with assaulting Person A. Mencia also filled out a Domestic Incident Report (DIR) regarding the incident (DX 2). Mencia stated that both the complaint report and DIR were filled out in close proximity to the incident and are fair and accurate descriptions of what occurred.

Mencia stated that Person A told her that she and Respondent had a verbal dispute in regard to him leaving the apartment and it got physical. She tried calling 911

at the time and he did not want her to call 911 so they started wrestling for the phone.

Person A told Mencia that Respondent put her in a headlock, choked her and tried to grab the cell phone away from her. She sustained bruises on her hands and on her arm and one on her neck. She also stated that there was once an incident where Respondent bit her on her wrist but she never reported it. Mencia testified that **Person A** said the fight started because she wanted Respondent to move out, but he did not want to move out yet because the place where he was supposed to be moving to was not set up yet.

Mencia stated that she filled out the Aided Report (DX 3) because of the injuries on **Person A**. She further testified that although the photographs are marked as being pictures of [REDACTED], this is only due to a mistake. They are actually photos of **Person A** (DX 4). Photograph 1 depicts cuts to both **Person A** hand and her finger. Photograph 2 is a little scratch by her elbow. Photograph 3 is a little scratch on **Person A** neck. Photograph 4 is a picture of **Person A** hands with scratches to both of them. Photograph 5 shows a light scratch on her arm. Photographs 6 and 7 are pictures of **Person A**. Photograph 8 depicts a little red mark below **Person A** eye.

Mencia stated that when she finished interviewing and photographing **Person A** she walked out of the domestic violence office, stopped in the community affairs office, and had a conversation with Respondent about the incident with **Person A**. Respondent told Mencia that he wanted to leave, that he had his things packed up - but he could not because his place was not ready yet. He also told Mencia that he had said to **Person A** "you don't have to call 911." Mencia did not memorialize her conversation with Respondent in writing because it was just spontaneous remarks from him.

During cross-examination, Mencia stated that she did not see Person A at the scene of the incident. She also conceded that everything that she filled out was based upon what Person A told her.

Mencia further testified that Respondent had told her that Person A was taking prescription pills for anxiety and mental instability.

Upon being asked if Person A scratch in photograph 2 looked to be an old scratch rather than one sustained on February 8, the date of the incident with Respondent, Mencia stated, "Yes." Regarding photograph 3, Mencia said that "you can hardly see [the bruise in the picture]." Regarding photograph 5, Mencia stated that there is a very light, barely noticeable injury.

Mencia testified that Person A told her she sustained all of her injuries [except for the bite mark] on February 8, the date of the incident with Respondent.

Person A

Person A works as a receptionist for General Vision and Cohen Fashion Optical. She has worked there for 20 years. She met Respondent about six years ago in an online chat room known as "I Love New York City Cops." Since that time, she has had an "on and off" relationship with Respondent. The relationship became serious in 2009, and Person A began living with Respondent on November 1, 2009. At that time, Respondent and his [REDACTED] came to live with Person A and her [REDACTED] at Person A apartment.

Respondent lived in that apartment for four months after November 1, 2009. According to Person A their relationship was not good from the first day that he moved

in. He argued about dinner, what was for dinner, and why she did not cook for his

[REDACTED] Person A stated that during those four months, only she paid the bills.

Respondent never offered to pay any bills. Prior to living with Person A Respondent lived in [REDACTED] with his mother.

In February of 2010, Person A relationship with Respondent ended. This happened because he was getting aggressive, and being mentally, verbally, and physically abusive. For example, he called Person A names like "whore" and "cunt," pushed her and even bit her.

Person A testified that on the day Respondent bit her, she took off from work and Respondent did not know she was in the house. When he found out she was home, he got upset and kept closing and opening the door in order to be loud and bother her. He said she should tell him when she was going to take off from work. Then he started calling her names and punched her in the head. She went to block him and he bit her on the wrist. Person A did not call the police after this because he kept taking the phone away from her so she would not call the police.

Person A stated that this was not the first incident of a physical nature that she had with Respondent. Prior to this, he always used to push her around, shove her from room to room, and corner her. Person A never called the police prior to February 8, 2010, because she did not want him to lose his job, and he kept taking the phone away from her whenever she said she was going to call the police.

On February 7, 2010, Person A and Respondent had a conversation regarding his

[REDACTED] He told her that she was not "doing girly stuff with her." This conversation

escalated when Respondent started pushing Person A. She attempted to call the police but Respondent took the phone away from her and did not allow her to call.

On February 8, 2010, starting at 9 a.m., Respondent called her job, and was harassing everybody at the office. She said that two women in the office said that he kept calling and hanging up. He also cursed Person A saying, "where is the bitch, where is the whore." Nobody reported this to the boss so Person A would not get in trouble.

Around 5:20 p.m., Person A got home and said to Respondent, "'If you are going to leave, I want you to leave today.' That's when he got up, his temper went up, and he said 'I don't have to leave.' And [Person A] said 'yes, you are going to leave because I am going to call the cops and you are going to leave.'"

Person A testified that after that, that was when Respondent started coming up in her face, he started pushing her around from the living room to the bedrooms, to the kitchen, toward the stove and toward the window. Soon, Respondent's [redacted] came out of her bedroom and, because she did not want Person A to call the cops, helped Respondent try to take the phone away from Person A.

Person A stated that Respondent put her in a "neck choke" and his [redacted] was standing in front of her. Person A "just managed to dial 911" and scream the address of her apartment (DX 5, tape of 911 call). Respondent told her to hang up, and asked her why she was calling 911. He and his [redacted] took the phone and hung up the call.

Person A stated that it is her voice on the 911 tape screaming because they were both attacking her. She further stated that in addition to her own voice, Respondent's voice could be heard on the tape asking her three times why she was calling the cops.

Person A testified that when the police arrived, she was in her bedroom and Respondent was in the living room. She explained to the arriving police officers what had happened and also stated that she wanted her phone back from Respondent. Soon thereafter, she was taken to the police precinct to speak with a domestic violence officer, Mencia. Mencia took eight photographs of her.

Person A stated that the eight photographs depict cuts she received from the prior incidents on February 7 and 8, 2010. She testified that on February 7, she and Respondent had an altercation and she remembered getting cuts from it. She got the other cuts on February 8.

Person A testified that photograph 2 shows a scratch she received on February 8, 2010, when Respondent pushed her up against a stove. She stated that photograph 3 shows a mark [above the chain, not below] from Respondent choking her. Photograph 4 shows marks caused by Respondent trying to take away the phone again. Photograph 5 shows a bite mark on her right wrist, which was created two weeks prior to the incident.

Person A described photographs 6, 7, and 8 as "just [] regular picture[s]."

Person A said that her handwritten narrative of the incident on the DIR is a fair and accurate assessment of what happened and she still stands by her allegations.

Person A testified at Respondent's criminal trial but did not see him or speak with him after the trial ended.

During cross-examination, **Person A** stated that when she arrived home from work on February 8, 2010, she noticed that a bin had been moved. She thought that Respondent probably forgot to put the bin back, but she also had a hint of thinking that hopefully Respondent was packing his things to move out. She did not know if he had

intentions of moving or not. She did not know what he was thinking or what he was planning to do.

Person A testified that in order to find out more clearly whether he was moving out, she told Respondent “if you are going to leave, you leave today.” In response to this statement, Respondent got up from the couch, stood right in front of **Person A** and said he was not going anywhere. He then started pushing her around the apartment, into the wall, and into the stove.

Person A admitted that on February 7, 2010, she was sick – she was coughing up blood, she had a nosebleed, and she was hyperventilating. She considered going to the hospital but went to her family’s house instead. This was also the same day that **Person A** had an argument with Respondent about her treatment of his [REDACTED]

Person A conceded that a few days before February 7, 2010, she wrote a card to Respondent in which she tried to reconcile and work things out [Respondent’s Exhibit (RX) A]. All of the handwriting inside the card is **Person A** handwriting and all of the writing on the outside of it is not her writing.

Person A testified that in the card she wrote about Respondent being “verbally abusive” to her, and discussed his other flaws, but did not mention physical abuse. In addition, in the card she admitted to having “OCD,” or obsessive-compulsive disorder. However, she testified that she does not have OCD. She wanted to improve her relationship with Respondent so she falsely admitted to having OCD.

Person A denied that the card was written as part of an effort to get Respondent not to move out. She stated that she wanted to “like work things out, not want him to stay there with [her], no, no.”

[Person A] testified that Respondent punched his [REDACTED] in the nose on one occasion. Despite having previously told the police that Respondent punched his [REDACTED] "a couple of times," [Person A] testified that it might have been only one punch. She did not know how many times he punched his [REDACTED] because "they were both going at it...she was hitting him, too." [Person A] stated that after taking the punch, Respondent's [REDACTED]'s nose was bleeding and she "fell onto the bed." However, nobody called the police at that time.

[Person A] reiterated that she had bruises from February 7 and 8, 2010, despite having told police officers that she had no injuries.

Regarding photograph 4 (DX 4), [Person A] stated that even though the picture shows her left wrist and she claimed to have been bitten on her right wrist, Respondent bit her. She may have forgotten which wrist it was because of the length of time between the bite and her testimony.

During redirect examination, [Person A] stated that in her interview on February 8, 2010, she told the Department investigators that earlier that day Respondent scratched her, placed her in a choke hold, pushed her up against the wall, pulled her hair, and spit in her face. Furthermore, she had explained to them that some of her cuts were received on February 7, and some were received on February 8. She also told them that Respondent had previously bit her. In addition to her interview, she spoke with Mencia and discussed the physical incidents that took place between her and Respondent.

[Person A] stated that in her card to Respondent (RX A), when she wrote "I thought the only thing left to work on now was with your anger issues and losing all control," she was referring to Respondent pushing her around, calling her names, and

spitting in her face, among other things. When she wrote, “losing all control,” she was referring to both verbal and physical abuse.

Person A testified that when she wrote in the card about being “talked to disrespectfully and trashed,” and how “[Respondent] said a lot of things that really hurt [her] today,” she was referring to Respondent calling her “whore,” “slut,” and other names. In addition, she mentioned in the card how Respondent always had to “have the last word in everything.” When she indicated in the card that her relationship with Respondent had been filled with “ups and downs,” she meant that they had broken up and gotten back together several times, and sometimes she wanted him to stay in the apartment, and sometimes she did not.

Upon questioning by the Court, **Person A** stated that she did not see any packed items of Respondent on February 8, 2010 – just a bin that “was always like sealed and closed and in the closet...It was like a storage bin.” The bin was not in any condition different than usual – nothing was packed on top of the bin as if Respondent was packing to leave.

Person A reiterated that she called the police on February 8, 2010, because Respondent was pushing her around the apartment, pulling her hair, and choking her.

Person A stated that she had cuts on both sides of her hands, and they were from both February 7, 2010, and February 8, 2010, but she could not remember which ones were from which day.

She further testified that on February 8, 2010, when the police arrived they retrieved her phone for her and “it didn’t have the back piece [that covers the battery].” She eventually found “the back piece like crumbled up in the bedroom.”

Person A stated that the police got there pretty fast after she dialed 911. She also stated that she is approximately 5 feet, 4 inches in height, and 130 pounds in weight.

Person A said that the picture in evidence of her hand that was bitten depicts the correct hand. She knows this because she was bitten on the same hand as the hand on which she wears a bracelet.

Upon recross examination, **Person A** agreed that Respondent took her phone from her on both February 7, and February 8, 2010. However, she could not recall whether it was on February 7 or February 8 when Respondent took off the back of her phone. Respondent's counsel read from a transcript of **Person A** interview from February 8, where **Person A** stated that "yesterday [indicating February 7]" Respondent took off the back of her phone.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent is divorced and has full custody of a [REDACTED] He has been a member of the Department for over 16 years. He is currently on modified assignment and working at Police Service Area 1/Viper 13.

Respondent testified that on February 7, 2010, which was the date of the Super Bowl, **Person A** was in her room all day and he was watching TV in the living room all day. After the Super Bowl, **Person A** came out to the living room and "she said, you know, do you want to talk?" Although Respondent was "looking for sleep," **Person A**

insisted that they have a discussion regarding their relationship. The two got into an argument regarding Respondent's [REDACTED] and Person A calling her a "bitch," and said "she don't have no manners, this and that." Respondent raised his voice, which he always does to get his point across, but there was no physical altercation during this argument. Soon thereafter, Person A started crying, and "kind of lost it."

Respondent testified that after Person A started crying, she went to her bedroom, cried a little bit more, then she went to the bathroom and started making weird noises like she was "gargling," "choking," and Respondent got a little worried. Eventually she came out, and said that she was going to the hospital because she had a nosebleed. Respondent questioned this decision and told her in a non-argumentative manner that she should sit down and relax. Person A left, saying that she was going to [REDACTED] Hospital in Manhattan because her medical records were stored there. Respondent stated that there still had not been any sort of physical altercation up to this point.

After Person A left, she texted Respondent that she was "in a cab on her way to [REDACTED]" However, she came back home within one hour, and went sobbing quietly into her bedroom.

The next day, Person A texted Respondent "all day from work...more or less, you know, to have [their] relationship work out smoothly, this and that." The two "must have texted for at least three to four hours" before Respondent got tired. He testified that he could not get his point across to her - what Person A said to his [REDACTED] was unacceptable. He stopped responding to her texts, but Person A continued to text him, her tone changing from apologetic to confrontational.

Respondent testified that after getting off work, Person A came home and went straight into her bedroom to take a shower. Then, while getting her bathrobe, she saw a clear plastic bin which contained Respondent's summer clothes. She then went over to Respondent, who was on the couch watching TV, and said, "you don't want to talk about it, you are just going to pack up and leave?" Respondent then said to Person A "This is the problem...the look in your eyes like you are ready to kill me, your tone of voice, and your body stance, you know. It gets me jittery, you know....if I was on the street working and somebody approached me like that, you will be arrested for disorderly conduct."

Respondent testified that Person A then said, "oh yeah, fuck you," and lost control of her emotions. She went into her bedroom and he could soon hear that she was speaking with a 911 operator. She came out of the bedroom and was still talking to the operator, about an arm's length away from Respondent. Respondent instinctively tried to grab her phone away from her. He was worried that she was trying to file a false report about him. He "got the top half" of the phone away from her, but Person A kept the bottom half and continued to talk to the operator. Respondent testified that this was when Person A started screaming.

Respondent stated that when he grabbed for the phone, there had been no physical altercations no pushing, kicking, spitting, or anything else.

After Person A started screaming, Respondent and his [REDACTED] both began saying, "why the fuck are you calling the cops for?" and the three of them began struggling for the phone. In the midst of the struggle, Respondent realized that he could not hold onto the phone anymore so he let go and just sat down. He did not strike her,

kick her, push her, or punch her. Respondent stated that the police arrived very quickly, "within two minutes," and when they got there, he was laying on the couch.

Regarding his relationship with Person A Respondent testified that they met on an AOL chat room called "I Love New York City Cops." Before moving in together, the two had a relationship as "F buddies," or "friends with benefits" for approximately six years. They moved in together because Respondent felt Person A was in love with him, and he thought, "let's step it up to another level, see if we can work out a serious relationship." When Respondent first moved in with Person A he knew he made a mistake on the very first night. "She had like hundreds of crazy rules of the house." Respondent began to question her mental stability. In addition, he also noticed a prescription bottle for anxiety medication in her name. Person A denied that it was hers, stating that it was for her [REDACTED]

Respondent testified that on Wednesday, February 3, 2010, Person A gave him a card (RX A). She gave him the card, in Respondent's opinion, to apologize and keep him in the house. He had told her numerous times that he was going to move out and pack his things. But Person A would unpack them and put everything back, and she would apologize.

Respondent stated that before February of 2010, he had never had any physical altercations with Person A. He also asserted that prior to February 8, 2010, he never took her phone or attempted to take her phone.

Respondent stated that he never bit Person A. In fact, he stated that it would have been impossible for him to do so because he has had two false teeth for three or four years. He asserted that his teeth would have fallen out if he had bitten her. He eats with

his molars in the back and can take out his two front teeth and put them back in at will. He is currently waiting for false teeth.

During cross-examination, Respondent clarified that when he said, "F buddies" he meant "fuck buddies."

Respondent testified that his [REDACTED]'s mother used to be in a mental institution. She had a panic attack when she and Respondent were going through their divorce, and admitted herself into [REDACTED].

He further stated that the reason that his [REDACTED] was involved in trying to take the phone away from Person A was that she "has common sense, okay." Person A dialed 911 for no apparent reason, so Respondent's [REDACTED] knew that Person A was trying to get Respondent into trouble with his job. Respondent did not try to stop his [REDACTED] from intervening in the scuffle for the phone, even though he thought Person A was unstable. He was not concerned about this because he did not want a false report against him.

At an official Department interview, Respondent agreed that his [REDACTED] attempted to grab the phone from Person A. At this proceeding, he stated that his [REDACTED] grabbed Person A's wrist.

Respondent described the struggle that ensued after he attempted to take away Person A's phone as follows: Person A came back from the bedroom and was on the phone. She had already started talking to the 911 operator, whose voice was audible in the background. Person A said, "He is a cop," and then gave her home address. Then, instinctively, Respondent tried to grab the phone and said, "why the fuck are you calling the cops for?" His [REDACTED] was in the kitchen, and she came in to assist Respondent in

trying to get the phone. Person A started screaming "like she was getting stabbed like a hundred times." After maybe 10 or 15 seconds, Person A crouched down and Respondent could not keep hold of the phone, so he just let go and sat down.

Respondent suffered injuries on his hands during the struggle, and his [REDACTED] was also injured. These injuries were not documented via photograph, however. They were not memorialized in any paperwork, either.

When Respondent was arrested on February 8, 2010, he was already on modified assignment for calling another police officer and stating, "you better watch out for IAB, they are going to come looking after you." He had a trial and was found guilty of that charge.

On February 8, 2010, Respondent was planning to move out because he and his [REDACTED] wanted to leave. He testified that he recalled telling Mencia at the precinct that Person A was an "EDP [emotionally disturbed person], a psycho, and basically that's it." He did not recall telling her that he had not wanted to move out yet, and that Person A had been telling him to move out.

Respondent testified that at the time of his arrest he had been staying with Person A for four months. Prior to that, he lived in [REDACTED] with his mother and [REDACTED].

He stated that he met Person A in 2004 in an online chat room where women go to meet police officers and police officers go to meet women. Since 2004, he has met other women in the same chat room and has had romantic relationships with them. In fact, when he was placed on modified assignment, it was because of an incident that occurred involving the ex-boyfriend of a woman he met in the same chat room.

Respondent testified that the 911 tape (DX 5) was a fair and accurate representation of what transpired. He stated that he attempted to prevent her from calling 911 because he "knew she was going to make a false report." All of the beep noises that are on the 911 tape are Person A thumb beeping on it.

Respondent agreed that it is reasonable to believe Person A would have gotten scratches and cuts during the scuffle for her phone. He stated that his [REDACTED] made a false accusation against him once, and that is what made him afraid of Person A doing the same thing.

Respondent admitted that he has been found guilty of harassment in two previous trials.

During redirect examination, Respondent stated that the two harassment incidents were verbal altercations with men, "[t]wo ex-boyfriends." There was never any physical altercation with either of these men.

Respondent testified that prior to Person A picking up the phone to dial 911, he had not done anything illegal. He had not physically touched her in any way, nor did he threaten her, or do anything else that would reasonably prompt a 911 call.

During recross examination, Respondent admitted that when the police came, he was very calm. However, he stated that this was not because he was no longer afraid of a false report being filed. It was because he knew it was coming by that time.

During redirect examination, Respondent reiterated that when Person A began speaking to the 911 operator, he still had not done anything to merit a 911 call. He had still not touched her or reached for the phone to grab it.

Upon questioning by the Court, Respondent stated that he never had possession of Person A phone on February 7, 20[10] or February 8, 20[10], despite Person A testimony to the contrary.

He testified that he had a storage space near Person A apartment, and that on February 8, 20[10], he was moving some of his belongings there. He stated, "Slowly, I was going to move out, because I was planning to move out at the end of February...Prior [to February 8] I had packed numerous times to leave, but she would always unpack [the bags]...Like I said, I tried to work it out, but it got progressively worse, and worse, and worse. I was taking most of the verbal abuse and other mental abuse, but when it came to my [REDACTED] I said that's enough. When you call my [REDACTED] a bitch and start verbally abusing my [REDACTED], that's when I draw the line. That's when I said let me get out now. I just couldn't wait no more."

He stated that the bin that was out was a bin that he was going to take away to storage. When asked if he pulled it out and was going to put it back he stated, "oh, no, that's ludicrous."

Respondent testified that he is 6 feet tall and 190 pounds in weight, but in 2008 he weighed between 180 and 185 pounds. He also agreed that he has a temper. He said, "I do admit verbally some people perceive me in the wrong way, you know, but the majority of my friends they know how I am. I like to be straightforward, blunt." However, he said he does not push or shove in addition to his verbal comments. He stated that he never pushed or shoved Person A around and that she was lying when she said that he did.

Respondent testified that part of his concern was that when Person A was calling 911, he was already on modified assignment. Before Person A dialed 911, he did not verbally or physically abuse her. He only told her, "If I was on the streets right now and somebody approached me in a threatening manner like that, you will be arrested."

Upon recross examination, Respondent admitted that he had been on modified assignment twice prior to being placed on modified assignment again for the incident with Person A.

FINDINGS AND ANALYSIS

Specification Nos. 1 and 2

Respondent stands charged herein in that while off-duty, on or about and between February 7, 2010 and February 8, 2010, he engaged in conduct prejudicial to the good order and efficiency of the Department in that he was involved in a physical altercation with Person A. He is also charged with engaging in conduct prejudicial to the good order and efficiency of the Department in that on or about February 8, 2010 to wit: said police officer attempted to prevent Person A from calling 911.

Respondent admitted to engaging in a physical altercation with Person A. He admitted that during the course of trying to take her cell phone out of her hand, he sustained injuries to his hand. His [REDACTED] also sustained injuries. Respondent also acknowledged that during the struggle to take the cell phone from Person A as she called 911, she could have sustained injuries. Person A testified and provided pictures of the injuries she sustained to her hands (see DX 4, where photographs depict scratches to the top of her hands, and red areas on both middle fingers where the skin was removed).

Although Respondent tried to argue that prior to calling 911, nothing transpired between him and Person A given the heated nature of the 911 call, the Court finds it difficult to believe that nothing was taking place between them. Person A testified credibly that Respondent was choking her at the time that she called 911. After telling the 911 operator her address, she was unable to give any further information or answer any further questions. This was corroborated by the 911 call in evidence, where the 911 operator repeatedly asked for the correct apartment number and there was no response from Person A. At various times the telephone buttons seemed to be pressed during the 911 phone call, evidence of a struggle over the phone between Respondent, Person A and Respondent's c [REDACTED]

Evidence adduced at trial also established that Respondent and Person A had a verbal and physical altercation that began on February 7, 2010. Person A testified that she had a conversation with Respondent about his c [REDACTED] He accused Person A of not doing "girly stuff" with his [REDACTED] According to Person A the conversation escalated and Respondent began to push her around. As she attempted to call the police that day, Person A said that Respondent took the phone away from her.

Person A was interviewed on February 8, 2010 by Police Officer Mencia. She took a Domestic Incident Report based on Person A account of what Respondent had done that day. Person A said that Respondent had grabbed her, and pushed her into a wall among other things. She also testified that when she attempted to call 911, Respondent and his [REDACTED] held her and took the cell phone away from her. The taking of the cell phone was corroborated by police officers who responded to the scene following the 911 call. Sergeant Pellegrino testified that when he arrived at the

apartment, Person A was in the window and stated that she was with a police officer in her apartment and she wanted him out. When he arrived at the apartment, Person A opened the door and informed him that she was constantly being abused by Respondent and that he hit her the day before and that she could not take it anymore. She also stated that they had a struggle that day and Respondent took her cell phone. Pellegrino testified that he asked Respondent for the cell phone and he had it in his right, front pocket and gave it to him.

Respondent testified in his defense that Person A was mad that he was moving and wanted him to lose his job out of spite. He claimed that nothing happened between them and in fact, she gave him a Hallmark card (RX A) asking him to stay. Yet, a struggle was heard on the 911 call and when the police arrived, Respondent was in possession of Person A cell phone. The Hallmark card contained a lengthy, handwritten note from Person A in which she mentioned that Respondent had "anger issues," that he lost all control and was verbally abusive. When Person A was questioned about the "losing all control" statement, she said that Respondent pushed and shoved her. It must be noted that Person A testified that she knew Respondent for six or seven years before they moved in together lasting about four months. There was no testimony that prior to moving in together, Person A threatened to have Respondent lose his job.

Respondent also tried to state that he was a family man, yet during his direct examination, he acknowledged that he was not in a relationship with Person A that they were just "fuck buddies" and friends with benefits. There was no evidence that he shared this view of the relationship with Person A.

Based on the above, Respondent is found Guilty of Specification Nos. 1 and 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of engaging in a physical altercation with Person A and attempting to prevent her from calling 911. The Assistant Department Advocate first recommended a penalty of 30 pre-trial suspension days, 15 vacation days, one-year dismissal probation and immediate filing for vested retirement. The following cases were cited: Disciplinary Case Nos. 78411/08 and 85076/09 signed June 21, 2010 which involved a 17-year police officer, with one prior adjudication, who negotiated a penalty of 26 vacation days, 34 suspensions days already served, one-year dismissal probation and immediate filing for vested retirement for throwing a drinking glass at his girlfriend causing her to sustain a chipped bone and a laceration to her palm.

Disciplinary Case No. 83356/07 signed February 23, 2009 involved a 15-year member with one prior adjudication for domestic assault who forfeited 15 vacation days, 30 suspension days already served, was placed on one-year dismissal probation and was required to file for vested retirement for punching and slapping his common-law wife in the face causing a laceration and swelling.

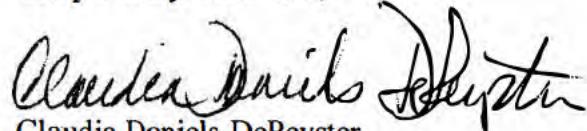
The Court informed the Assistant Department Advocate that a penalty which included vested interest retirement was not a penalty that this Court could impose given

the fact that the Court is bound by the parameters of the Administrative Code. The Assistant Department Advocate then recommended termination. The Court agrees.

A review of Respondent's employment record shows that he has been placed on modified assignment on two previous occasions. The first domestic incident involved a verbal dispute with his [REDACTED]. The second domestic incident involved leaving threatening or inappropriate voice mail messages for someone. With respect to those two matters, and this one, Respondent has spent almost four years of his career on modified assignment for domestic incidents. This type of behavior by a law enforcement officer cannot be tolerated. Respondent has not improved his conduct despite being placed on modified assignment three times, being suspended, and having his performance monitored by the Department. Respondent has demonstrated that his ties with the Department need to be severed.

Accordingly, it is recommended that Respondent be DISMISSED from his position as a police officer with the New York City Police Department.

Respectfully submitted,



Claudia Daniels-DePeyster

Assistant Deputy Commissioner – Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER KENJI EBANKS
TAX REGISTRY NO. 915661
DISCIPLINARY CASE NO. 86199/10

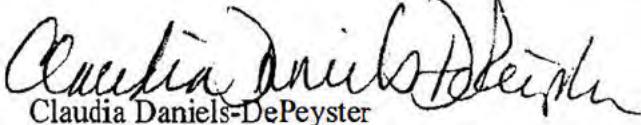
In 2009 and 2010, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluations. In 2008, he received a rating of 4.0 "Highly Competent." Respondent has received one Meritorious Police Duty Medal in his career to date.

[REDACTED]

[REDACTED]

On November 5, 2002, Respondent was placed on modified assignment but not arrested for aggravated harassment for making threatening telephone calls. Respondent received Charges and Specifications, pleaded Guilty and forfeited 15 vacation days. On May 3, 2007, Respondent was placed in Level II Discipline Monitoring based on his overall record. On March 12, 2008, Respondent was placed on modified assignment for being involved in a verbal dispute with his [REDACTED]. Respondent received Charges and Specifications, pleaded Guilty and forfeited 30 vacation days. On February 8, 2010, Respondent was suspended and later placed on modified assignment in connection with this matter.

For your consideration.


Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials